

NCGS Chapter 40 Imminent Domain Authority

Pursuant to current Chapter 40A of the North Carolina General Statutes (NCGS), the power of imminent domain (condemnation) is currently available to the Town of Southern Shores for establishing the following:

1. Streets and sidewalks
2. Electric power generation, transmission, and distribution
3. Water supply/distribution
4. Wastewater collection/treatment/disposal
5. Gas production/storage/transmission/distribution and natural gas resources
6. Public transportation systems
7. Solid waste collection and disposal systems/facilities
8. Cable television systems
9. Off-street parking facilities and systems
10. Airports
11. Stormwater management programs and drainage systems
12. Parks, playgrounds, and other recreational facilities
13. Storm sewer and drainage systems and works / sewer and septic tank lines and systems
14. Hospital facilities, cemeteries, and library facilities
15. City halls, fire stations, office buildings, courthouse jails and other buildings for use by any department, board, commission or agency
16. Drainage programs and programs to prevent obstructions to the natural flow of streams, creeks, and natural water channels or improving drainage facilities
17. Acquiring historic properties or landmarks to delay demolition (if historic district or historic landmarks are designated)
18. Opening, widening, extending, or improving public wharves

Of the above, the use of accelerated procedures to exercise the power of imminent domain (condemnation) under NCGS Chapter 40A is also currently available to the Town of Southern Shores for establishing the following:

1. Streets and sidewalks
2. Wastewater collection/treatment/disposal
3. Solid waste collection and disposal systems/facilities
4. Electric power generation, transmission, and distribution
5. Water supply/distribution
6. Wastewater collection/treatment/disposal
7. Gas production/storage/transmission/distribution and natural gas resources
8. Solid waste collection and disposal systems/facilities
9. Cable television systems

Pursuant to current NCGS Chapter 40A, the power of imminent domain (condemnation) is currently available to the following local governments for establishing beach erosion control or flood and hurricane protection works and public beach access [as specifically described in NCGS §40A-3(b1)(10) & (11)] :

CAROLINA BEACH
CARTERET COUNTY
DARE COUNTY
TOWN OF INDIAN BEACH
TOWN OF KILL DEVIL HILLS
TOWN OF KITTY HAWK
TOWN OF KURE BEACH
TOWN OF NAGS HEAD
TOWN OF NORTH TOPSAIL BEACH
TOWN OF PINE KNOLL SHORES
TOWN OF SURF CITY
TOWN OF TOPSAIL BEACH
TOWN OF WRIGHTSVILLE BEACH
(TOWN OF DUCK formally requested this authority on January 15, 2014)

Of the above, the following local governments have legal authority to use accelerated procedures under NCGS Chapter 40A [G.S. 40A-42-(a)(2)] to exercise the power of imminent domain (condemnation) for establishing beach erosion control or flood and hurricane protection works and public beach access [as specifically described in NCGS §40A-3(b1)(10) & (11)].

CAROLINA BEACH
CARTERET COUNTY
DARE COUNTY
TOWN OF INDIAN BEACH
TOWN OF KILL DEVIL HILLS
TOWN OF KITTY HAWK
TOWN OF KURE BEACH
TOWN OF NAGS HEAD
TOWN OF NORTH TOPSAIL BEACH
TOWN OF PINE KNOLL SHORES
TOWN OF SURF CITY
TOWN OF TOPSAIL BEACH
TOWN OF WRIGHTSVILLE BEACH
(TOWN OF DUCK formally requested this authority on January 15, 2014)

Proposed Legislation Under Consideration for Request:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2014

SESSION LAW 2014-__

BILL _____

AN ACT TO ALLOW THE TOWN OF SOUTHERN SHORES TO ACQUIRE PROPERTY FOR THE PURPOSES STATED IN G.S. 40A-3(b1)(10) and (11) AND TO BE ABLE TO MAKE SUCH ACQUISITIONS VIA THE PROCEDURES ALLOWED BY G.S. 40A-42-(a)(2).”.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 40A-3(b1) is amended by modifying the last sentence to read:

...

This subsection applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Southern Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

SECTION 2. G.S. 40A-42(a)(2) is amended by modifying the last sentence to read:

...

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Southern Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the ____ day of _____, 2014.

President of the Senate

Speaker of the House of Representatives

For a complete review of all statutory procedures regarding imminent domain authority for local governments in North Carolina, including those requiring due process in either of the procedures, see NCGS Chapter 40A in its entirety. Go to:

http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_40A.pdf

Current NCGS §40A-3(b1) (10) and (11) - currently read as follows:

.....

(10) Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works, including, but not limited to, the acquisition of any property that may be required as a source for beach renourishment.

(11) Establishing access for the public to public trust beaches and appurtenant parking areas.

[(10) and (11) apply only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.]

Current NCGS §40A-42(a)(2) – currently reads as follows:

.....

When a local public condemnor is acquiring property by condemnation for a purpose set out in G.S. 40A 3(b1)(1), (4), (7), (10), or (11), or when a city is acquiring property for a purpose set out in G.S. 160A 311(1), (2), (3), (4), (6), or (7), or when a county is acquiring property for a purpose set out in G.S. 153A 274(1), (2) or (3), or when a local board of education or any combination of local boards of education is acquiring property for any purpose set forth in G.S. 115C 517, or when a condemnor is acquiring property by condemnation as authorized by G.S. 40A 3(c)(8), (9), (10), (12), or (13) title to the property and the right to immediate possession shall vest pursuant to this subsection. Unless an action for injunctive relief has been initiated, title to the property specified in the complaint, together with the right to immediate possession thereof, shall vest in the condemnor upon the filing of the complaint and the making of the deposit in accordance with G.S. 40A 41.

This subdivision applies only to Carteret and Dare Counties, the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Emerald Isle, Holden Beach, Indian Beach, Kill Devil Hills, Kitty Hawk, Kure Beach, Nags Head, North Topsail Beach, Oak Island, Ocean Isle Beach, Pine Knoll Shores, Sunset Beach, Surf City, Topsail Beach, and Wrightsville Beach, and the Village of Bald Head Island.

For a complete review of all statutory procedures regarding imminent domain authority for local governments in North Carolina, including those requiring due process in either of the procedures, see NCGS Chapter 40A in its entirety. Go to